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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,268	12/09/2003	Perry Opin	Q73377	3324
23373	7590	01/23/2006	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			WERNER, JONATHAN S	
			ART UNIT	PAPER NUMBER
			3732	

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

②

<b>Office Action Summary</b>	<b>Application No.</b> 10/730,268	<b>Applicant(s)</b> OPIN ET AL.	
	<b>Examiner</b> Jonathan Werner	<b>Art Unit</b> 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/20/05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/09/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I, claims 1-10 in the reply filed on 12/20/05 is acknowledged. An action on the merits of claims 1-10 follows below:

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 12/9/03 was filed before the mailing date of the first Office Action on the merits. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As to claim 2, it is not clear what "the clip along thickness" is. As to claims 3 and 4, it is not clear what applicant means by the phrase "the clip rises along thickness in a direction separating from the bracket main body" since neither the thickness nor the direction specified are understood.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2 and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Voudouris (US 6,168,428). As to claim 1, Voudouris discloses an orthodontic bracket comprising a base (14) attachable to teeth surfaces; a bracket main body (12) equipped on one side of the base; an arch wire slot (20) along mesiodistal direction in the bracket main body; a U-shaped belt-like clip (30) having a catching end portion (36) and a recess portion (142); and a guide portion (34) formed in at least one of the bracket main body and the base. It should be noted that while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function and thus functional limitations are given little patentable weight. As to claim 2, the orthodontic bracket's recess portion is a concave portion (column 11, lines 27-28). As to claim 8, Voudouris discloses an orthodontic bracket as previously described, wherein the belt-like clip has a catching cutout portion substantially in V-shape (30b). As to claims 9 and

10, the clip has a contacting portion (30a or 38) and the bracket main body has a receiving portion (34 or 24) (Figure 2B).

5. Claims 1 and 2 are additionally rejected under 35 U.S.C. 102(e) as being anticipated by Orikasa (US 6,776,613). As to claim 1, Orikasa discloses an orthodontic bracket comprising a base (11) attachable to teeth surfaces; a bracket main body (12) equipped on one side of the base; an arch wire slot (13) along mesiodistal direction in the bracket main body; a U-shaped belt-like clip (20) having a catching end portion (21) and a recess portion (25); and a guide portion (34) formed in at least one of the bracket main body and the base. As to claim 2, the orthodontic bracket's recess portion is a concave portion (column 3, lines 19-28).

6. Claims 1, 3-5 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Christoff (US 6,071,119). As to claim 1, Christoff discloses an orthodontic bracket comprising a base (22) attachable to teeth surfaces; a bracket main body (20) equipped on one side of the base; an arch wire slot (30) along mesiodistal direction in the bracket main body; a U-shaped belt-like clip (32) having a catching end portion (34) and a recess portion (64g,65g); and a guide portion (46) formed in at least one of the bracket main body and the base. As to claims 3 and 4, Christoff discloses the recess portion is a cut-and-rising portion (64g,65g) where one side of a slit is a boundary formed at the upper end part of the clip (Figure 17). As to claim 5, the recess portion is formed at an end part of the clip (Figure 17). As to claim 9, the clip has a contacting portion (end

portion of 34a) and the bracket main body has a receiving portion (43a,44a,46a) (Figure 6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff.

Christoff discloses an orthodontic bracket as previously described, but fails to show the recess portion is shaped in a half-spherical dome. However, it would be an obvious matter of choice for the applicant to change the shape of the recess portion to a half-spherical dome in order to properly catch a corresponding clip release tool.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff in view of Voudouris. Christoff discloses an orthodontic bracket as previously described, but fails to show the recess portion has a cutout substantially in V-shape at a flat and end part thereof. Voudouris, however, teaches an orthodontic bracket with a U-shaped clip that has a recess portion that is a V-shaped cutout (30b). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to make the recess portion a V-shaped cutout in order to accommodate a tool to facilitate unlocking of the clip as taught by Voudouris.

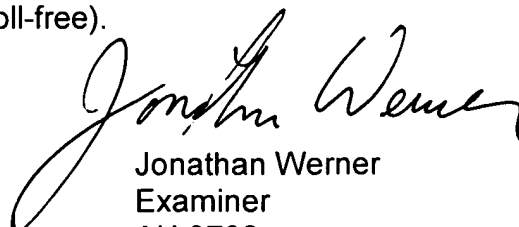
**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to included form PTO-892 for all additional pertinent prior art related to orthodontic brackets and clips.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Werner whose telephone number is (571) 272-2767. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jonathan Werner  
Examiner  
AU 3732

JSW  
1/16/06

  
MELBA N. BUMGARNER  
PRIMARY EXAMINER